

**Minutes
Bar Harbor Planning Board
September 19, 2007**

Members present: Kay Stevens-Rosa, Chair; Jennifer Booher, Vice-Chair; Kevin Cochary; Mike Gurtler

Also present: Anne Krieg, Town Planner; Kris Hultgren, Staff Planner; Lee Bragg, Esq., Town Attorney; Peter Drum, Esq.

I. CALL TO ORDER — 5:36 p.m.

II. EXCUSED ABSENCES

III. ADOPTION OF THE AGENDA

Mr. Gurtler made a motion to adopt the agenda. Mr. Cochary seconded and the Board voted unanimously on the motion.

IV. APPROVAL OF MINUTES

V. REGULAR BUSINESS

A. Remand of Dawes Subdivision – SD-06-10

Project Location: 120 Seabury Drive, Bar Harbor Tax Map 207, Lot 24

Applicant: Charles and Susan Dawes

Application: Subdivide the existing 6.7 acre lot into two lots.

Ms. Krieg introduced Peter Drum. Mr. Drum is representing the Planning Board for this project.

Mr. Drum gave an overview of the Appeals Board's decision, AB-07-09, that remanded this application back to the Planning Board. The Board discussed the Appeals Board's decision.

The Board discussed the merits of requiring an easement over Mr. Dawes's property. Specifically the Board questioned whether requiring the easement would provide two means of egress to the West Eden subdivision.

Mr. Cochary spoke about the past practice of granting modifications of the West Eden subdivision and the unfair requirement of having Mr. Dawes provide a second access to the subdivision when it should have been done in previous projects.

Mr. Gurtler discussed with the town's representative, Mr. Cunningham, whether the town is prepared to grant Mr. Dawes access to its right-of-way. Mr. Cunningham does not believe that is at issue here because he believes the issue is the performance standard of two means of egress for subdivisions of 15 or more.

Mr. Dawes gave an overview of his subdivision plans and the reasons why he thinks the modification of standard should be granted for his lot. The reasons include the poor condition of the town's right-of-way that would provide the second means of

egress, past practice of allowing modifications of standard for this subdivision and the Planning Board's decision to grant similar modifications in other subdivisions around town.

Mr. Cunningham described the town's argument for not allowing the modification of standard. It included the provision in the ordinance that requires a second means of egress for subdivisions of 15 lots or more (125-67 (G)(2)(h)). Mr. Cunningham acknowledged that past practice of Planning Boards did not require the implementation of this provision in the ordinance; however, that does not mean that that practice should continue.

Dana Reed, the Town Manager of Bar Harbor, talked about the town's land and its right-of-way from its property out to Route 3. He described the right-of-way as being 40 feet wide. Mr. Gurtler pointed out that this road width is not enough for a private way.

Mr. Cochary expressed his discomfort with requiring an easement of Mr. Dawes property to a road that is not usable at this time.

Mr. Reed described his experience using the town's right-of-way and believes it is accessible. He went on to describe the town's need for workforce housing and the possibility that the town's land may be used for this purpose.

Mr. Gurtler made a motion to continue the meeting until the Board comes to a conclusion. Ms. Stevens-Rosa seconded and the Board voted unanimously on the motion.

Mr. Gurtler asked if the town is willing to compensate Mr. Dawes for his easement. Mr. Reed said that is an issue for the Town Council.

Mr. Gurtler inquired about a limited easement that only allows emergency vehicles to use it. Mr. Drum said that this designation is possible but he cautioned the Board that it may not meet the ordinance standard of two street connections. Mr. Drum went on to caution the Board about setting precedent with a limited easement.

Mr. Cochary inquired about who could use the easement over the Dawes property if it were granted. Mr. Cunningham responded by clarifying that only members of the West Eden subdivision and potential homeowners on the town's land, along with emergency vehicles, would use the access way created by the easement.

Ms. Krieg clarified that Ms. Seabury still owns the road for the West Eden subdivision. Ms. Krieg encouraged the Planning Board to look at the project holistically. She went on to say that past practice does not obligate this Board to continue a previous error by other Planning Boards.

Mr. Kelly, speaking as a private citizen, urged the Board to justify its decision for a modification of standard.

Mr. Gurtler made a motion to close the public hearing. Mr. Cochary seconded and the Board voted unanimously on the motion.

The Board entered deliberations.

Mr. Gurtler encouraged the Board to justify a modification of standard based on site characteristics.

Mr. Cochary referred Board members to 125-67 FF and talked about the Comprehensive Plan and the Board's obligation to interpret the ordinances created by the Comprehensive Plan. Mr. Cochary believes that the site characteristics around the Dawes property justify a modification of standard.

Mr. Gurtler agreed with Mr. Cochary and explained further that a modification of standard is justified because granting the easement would adversely affect the health, safety and welfare of those living on Seabury Drive by altering the fundamental character of the neighborhood and increasing traffic.

Ms. Stevens-Rosa expressed that she did not think traffic would be significantly increased.

Mr. Cochary made a motion to grant the modification of standard based on the Board's ability in 125 65 FF to determine the plan or ordinances. The modification of standard (§125-67 (G)(2)(H)) is necessary to protect the public health, safety and welfare and particular site characteristics associated with Mr. Dawes's property. Specifically, the two street connections would negatively impact the character of the neighborhood and the welfare of Seabury Drive residents and increase the traffic on the existing substandard street. The particular site characteristics associated with Mr. Dawes property that justify the modification of standard include the fact that granting the easement would not create two street connections and Mr. Dawes does not have the right to grant access to Seabury Drive. Mr. Gurtler seconded and the Board voted 3-1 on the motion with Ms. Stevens-Rosa voting nay.

Mr. Gurtler made a motion to approve Mr. Dawes application. Mr. Cochary seconded and the Board voted 3-1 to approve. Ms. Stevens-Rosa voted nay.

Gurtler moved to approve the application. Mr. Cochary seconded and the Board voted 3-1 on the motion. Kay opposed.

Mr. Gurtler made a motion to move items D & E on the agenda to the October 17 Planning Board meeting. Mr. Cochary seconded and the Board voted unanimously on the motion.

- B. Continuation of a Public Hearing – SD-06-20 – Orchard Ridge**
Project Location: 45 Knox Rd, Bar Harbor Tax Map 227, Lot 46
Applicant: Shaw & Gott III, LLC

Application: Proposes to create an 8 lot residential subdivision off of Knox Road in Town Hill.

Noel Musson, representing the applicant, gave an overview of the changes to the project throughout the process that included reducing the number of lots to 8 and changing the end of the road from a cul-de-sac to a hammerhead.

Mike Ross, representing the applicant, reviewed the proposal to test neighbors' wells.

Ms. Krieg questioned the applicant about the wetland on lot #3 and specifically asked whether the applicant determined the 71,000 SF number listed on the plan by an on-site analysis. Greg Johnston, representing the applicant, commented that two wetlands scientists had walked the site and received permission to access adjoining lots not on the site plan.

Ms. Krieg also questioned whether a building envelope is possible on lot #8 when the setbacks are factored into the plan. Mr. Musson pointed out that there is a building envelope for a house that is a similar size to other homes in the area.

Mr. Cochary inquired about whether the neighbors had followed through with their request to have their well tested. Mr. Ross indicated that no neighbors requested a well test.

Ms. Booher opened the meeting to public comment.

Elisa Hurley expressed her concern for the impact this development would have on her water capacity.

Michael Staggs expressed his disappointment with the configuration of the development lots. He specifically referred to the small building envelopes on some lots and he questioned the size of the wetland on lot #3.

Mr. Gurtler inquired about the homeowners association and the language regarding the stormwater basins, buffers and open space. Mr. Ross pointed out the bylaws lay out the responsibilities of maintaining the stormwater basins, buffers and open space.

Elisa Hurley asked about the status of the existing trails that cut across the proposed subdivision. Mr. Ross responded that his client is amenable to a mutual negotiation that involves the trails on the proposed subdivision and the abutting subdivision.

Beth Ingebritson talked about the overall sustainability of the subdivision with so much land being affected. She also specifically referred to the existing house and the integrity of its sewer system. Mr. Ross addressed the issue by explaining that the home is in the process of trying to be sold.

Dessa Dancy expressed her concern about the development and specifically mentioned the water capacity and how the recharge rate is calculated.

A woman who's name was not audible inquired about enforcement action should something go wrong with the development in terms of stormwater maintenance subdivision upkeep. Mr. Cochary and Ms. Krieg commented that the Land Use Ordinance lays out the process of enforcement.

Mr. Cochary made a motion to close the public hearing. Mr. Gurtler seconded and the Board voted unanimously on the motion.

Mr. Gurtler made a motion to open deliberations at the October 17th meeting. Mr. Cochary seconded and the Board voted unanimously on the motion.

C. Public Hearing – SP-07-03 – Kingdom Hall

Project Location: State Highway 3, Bar Harbor Tax Map 212, Lot 60

Applicant: Bar Harbor Congregation of Jehovah's Witnesses

Application: Proposes to construct a 3,696 SF place of worship.

The Board discussed the project.

Ms. Stevens-Rosa opened the public hearing. No one from the public spoke at the public hearing.

Mr. Gurtler made a motion to close the public hearing. Mr. Cochary seconded and the Board voted unanimously on the motion.

Mr. Gurtler made a motion to accept the application as presented. Mr. Cochary seconded and the Board voted unanimously on the motion.

VI. OTHER BUSINESS

A. Sabah Woods Alterations

Noel Musson outlined the changes to the plan. He specifically mentioned altering two lot lines and the road.

Mr. Gurtler made a motion to accept the changes to the plan and endorse the plan. Mr. Cochary seconded and the Board voted unanimously on the motion.

B. Cadillac Management Decision

Ms. Booher asked for two grammatical changes to the decision but otherwise the Board endorsed the decision.

VII. PLANNING DIRECTOR'S REPORT

Ms. Krieg updated the Board on upcoming site visits.

Ms. Krieg asked Board members to participate in the Hamilton Station neighborhood meeting if possible.

VIII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

IX. ADJOURNMENT – 9:36 PM

Ms. Gurtler made a motion to adjourn, Mr. Cochary seconded and the Board voted unanimously on the motion.

Signed as approved:

Kay Stevens-Rosa, Chair
Planning Board, Town of Bar Harbor

Date